Dec 17. Rec'd U S appl - appl from Appeal
Miller -

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~482.~~ 523

THE UNITED STATES, APPELLANTS, vs. SAMUEL S. SMOOT.

524

No. ~~483.~~—CROSS-APPEAL.

SAMUEL S. SMOOT vs. THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 13, 1871.

13 Dec 1 2 8
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Motion to dismiss

Judge Davis

Dec 17. Rec'd U.S. appl. Appl. from Appeal
Miller

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1 *Petition.*

U. S. Court of Claims, December term, 1868.

SAMUEL S. SMOOT
vs.
THE UNITED STATES.

To the honorable Court of Claims:

The petition of Samuel S. Smoot, a citizen of the United States, respectfully represents:

That, on the fifth day of February, A. D. 1864, he entered into two contracts in writing with Captain James A. Ekin, chief quartermaster of the cavalry bureau, acting for and on behalf of the United States, which contracts are in the words and figures following, viz:

Articles of agreement made and entered into this fifth day of February, anno Domini one thousand eight hundred and sixty-four, between Capt. James A. Ekin, ch'f Q. M. cav. bu., and ass't quartermaster U. S. Army, of the first part, and Samuel S. Smoot, of Washington, D. C., of the second part.

This agreement witnesseth: That the said Capt. James A. Ekin, chief Q. M. cav. bureau, for and on behalf of the United States of America, and the said Samuel S. Smoot, for his heirs, executors, and administrators, have covenanted and agreed, and by these presents do mutually covenant and agree to and with each other as follows, viz:

First. That the said Samuel S. Smoot shall have delivered at the Government stables, in Saint Louis, Mo., by or before the sixteenth day of March next, the following-named cavalry horses, to wit:

Second. Twenty-five hundred (2,500) cavalry horses; said horses to be sound in all particulars; not less than five (5) nor more than nine (9) years of age; from (15) to sixteen (16) hands high; bridle-wise; of size sufficient for cavalry purposes; compactly built, in good flesh, and free from all defects.

2 Third. It is agreed that deliveries of the above-named horses shall and will be made as follows:

Twenty-five hundred (2,500) within forty (40) days from the date of this contract.

In case of the failure on the part of the party of the second part to deliver the horses within the time and in the manner specified in this agreement, the party of the first part is authorized to make good the deficiency, by purchase, in the open market, at the expense of the said party of the second part.

Fourth. It is agreed that the horses, upon being delivered, shall be examined and inspected without unnecessary delay, by a person or persons appointed by the United States, and after such inspectors shall have certified that they are in all respects as contracted for, and fully equal to the specifications aforesaid, they shall be received and become the property of the United States; and all such horses as may be condemned and rejected by said inspectors, shall be removed from the Government stables within one (1) day after the contractor shall have been notified of said rejection.

Fifth. It is agreed that for and in consideration of the faithful fulfillment of the above stipulations in all their parts, the party of the first part agrees that the party of the second part shall be paid by the

United States, at the office of Quartermaster U. S. Army at Washington, D. C., as follows, viz:

One hundred and twenty-six dollars ($126 00) for each and every horse of the first five hundred (500) horses so delivered.

One hundred and twenty-six dollars and fifty cents ($126 50) for each and every horse of the second five hundred (500) horses so delivered.

One hundred and twenty-seven dollars ($127) for each and every horse of the third five hundred (500) horses so delivered.

One hundred and twenty-seven dollars and fifty cents ($127 50) for each and every horse of the fourth five hundred (500) horses so delivered, and one hundred and twenty-eight dollars ($128 00) for each and every horse of the fifth and last five hundred (500) horses so delivered.

Payment to be made on completion of contract, should Congress have made an appropriation for that purpose, or as soon thereafter as funds may be received; withholding ten per cent. from each payment until the whole quantity shall have been delivered, and the contract be completed; and in the event of defalcation or non-fulfillment in any of its parts, on the part of the party of the second part, then said ten per cent. shall be, and is hereby, forfeited to the United States.

Sixth. It is further agreed and expressly conditioned that no member of Congress is, or shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom; that it is not transferrable without the consent of the proper authority; that any sale, transfer, or assignment of it, without such consent having
3 been obtained, (except under a process of law,) shall and will be considered an abandonment of it, and the said party of the second part, his or their securities, be held responsible for all loss, delay, or damage to the United States, which may arise from such abandonment.

In witness whereof the parties have hereunto set their hands and seals quintuplicate in the day and year first above written.

JAMES A. EKIN, [L. S.]
Chief Q. M. Cav. Bu.
SAMUEL S. SMOOT. [L. S.]

Sealed and delivered in the presence of—
T. B. BARNES. [L. S.]
S. C. DRENNEN. [L. S.]

Articles of agreement made and entered into this fifth day of Februruary, anno Domini one thousand eight hundred and sixty-four, between Capt. James A. Ekin, chief Q. M. cav. bu. and ass't quartermaster U. S. Army, of the first part, and Samuel S. Smoot, of the second part.

This agreement witnesseth: That the said Capt. James A. Ekin, chief Q. M. cav. bu. and A. Q. M. U. S. A., for and on behalf of the United States of America, and the said Samuel S. Smoot, for his heirs, executors, and administrators, have covenanted and agreed, and by these presents do mutually covenant and agree to and with each other as follows, viz:

First. That the said Samuel S. Smoot shall have delivered at the Government stables in Chicago, Ill., by or before the twenty-sixth day of March next, the following-named cavalry horses, to wit:

Second. Two thousand (2,000) cavalry horses, said horses to be sound in all particulars, not less than five (5) nor more than (9) years old, from fifteen (15) to sixteen (16) hands high, bridle-wise, and of size sufficient for cavalry purposes, compactly built, in good flesh, and free from all defects.

Third. It is agreed that deliveries of the above-named horses shall and will be made as follows:

Two thousand (2,000) within fifty (50) days from the date of this contract.

In case of failure on the part of the party of the second part to deliver the horses within the time and in the manner specified in this agreement, the party of the first part is authorized to make good the deficiency, by purchase in open market, at the expense of the said party of the second part.

Fourth. It is agreed that the horses, upon being delivered, shall be examined and inspected without unnecessary delay, by a person or persons appointed by the United States, and after such inspector shall have certified that they are in all respects as contracted for and fully equal to the specifications aforesaid, they shall be received and become the property of the United States, and all such horses as may be condemned and rejected by said inspectors shall be removed from the Government stables within one day after the contractor shall have been notified of said rejection.

4

Fifth. It is agreed that for and in consideration of the faithful fulfillment of the above stipulations in all their parts, the party of the first part agrees that the party of the second part shall be paid by the United States, at the office of Quartermaster U. S. Army, at Washington City, D. C., as follows, viz:

One hundred and twenty-four dollars ($124 00) for each and every horse of the first five hundred (500) so delivered.

One hundred and twenty four dollars and fifty cents ($124 50) for each and every horse of the second five hundred (500) so delivered.

One hundred and twenty-five dollars ($125 00) for each and every horse of the third five hundred (500) so delivered.

One hundred and twenty-five dollars and fifty cents ($125 50) for each and every horse of the fourth five hundred so delivered.

Payment to be made on completion of contract, should Congress have made an appropriation for that purpose, or as soon thereafter as funds may be received, withholding ten per cent. from each payment until the whole quantity shall have been delivered and the contract be completed, and in the event of defalcation or non-fulfillment thereof in any of its parts, on the part of the party of the second part, said ten per cent. shall be, and is hereby, forfeited to the United States.

Sixth. It is further agreed and expressly conditioned that no member of Congress is, or shall be, admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom; that it is not transferrable without the consent of the proper authority; that any sale, transfer, or assignment of it without such consent having been obtained, (except under a process of law,) shall and will be considered an abandonment of it, and the said party of the second part, his or their securities, be held responsible for all loss, delay, or damages to the United States which may arise from such abandonment.

In witness whereof the parties have hereunto set their hands and seals quintuplicate, in the day and year first above written.

JAMES A. EKIN, [L. S.]
Chief Q. M. Cav. Bu.
SAMUEL S. SMOOT. [L. S.]

Sealed and delivered in the presence of—
T. B. BARNES.
S. C. DRENNEN.

Your petitioner further shows that he at once proceeded to execute the said contracts in good faith by providing himself with the necessary funds, and employing agents to procure the horses which he had so agreed to deliver.

5 That, soon after the said contract was entered into, a circular order was issued from the cavalry bureau, under the authority of the Secretary of War, directing the inspectors of horses, which were to be received into the Government service, to exact certain conditions which were not contained in the contracts of your petitioner. (A copy of this order is hereto annexed, and marked Exhibit A, and petitioner prays may be taken as a part of this petition.)

Petitioner further states that he was ready and willing, and offered to comply with said contract, and deliver the horses specified in such contracts, of the kind and quality therein specified, within the time specified, and in the manner therein specified, at the places specified; but that before such delivery petitioner was notified by the officers in charge of receiving such horses, that no horses offered for delivery by petitioner would be received under said contracts, except as the same were modified and changed by the instructions so issued as aforesaid and contained in said circular.

Petitioner further states that he made repeated applications, both to the proper officers at the places of delivery, and also to the proper authorities at Washington, for permission to deliver the horses specified in such contract upon the terms and conditions therein specified, but was refused; and, on the contrary, it was insisted that petitioner should deliver such horses upon the terms and conditions specified in said circular so issued as aforesaid subsequent to the making of said contracts, the terms of which circular petitioner was not informed of until after he had made extensive arrangements for the fulfillment of such contract.

Petitioner further states that he could and would, in all respects, have fulfilled the said contracts upon his part if he had been permitted to do so; but that he was prevented from fulfilling said contracts by the acts of said officers in insisting upon other and different conditions than those contained in said contracts, and the refusal on their part to receive horses, except upon such amended and new conditions, and for the reason that petitioner would not accede to the terms of such new conditions imposed without the assent or knowledge of petitioner, he was thrust into prison and there detained for a period of six months.

6 That, upon urgent representations made to the President of the United States of the injustice which had been done him, his case was referred to the Judge Advocate General, who made a report thereon, (a copy of which is hereto annexed, and marked Exhibit B,) and, in accordance with that report, your petitioner was released by order of President Lincoln.

Petitioner further shows that he suffered damage by the refusal of the United States to receive such horses, and in the violation of said contracts by the United States, in the sum of fifteen dollars for each horse so agreed to be delivered, amounting in all to the sum of $67,500.

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he prays the judgment of this honorable court for the said sum of sixty-seven thousand five hundred dollars ($67,500,) and for such other and further relief as the nature of the case may show he is entitled to.

SAMUEL S. SMOOT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Samuel S. Smoot, being duly sworn, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof or interest therein, has been made, except as in said petition is stated; that the claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

SAMUEL S. SMOOT.

Sworn and subscribed to before me, a notary public in and for said district and county.

Witness my hand and notarial seal this tenth day of June, A. D. 1869.

N. CALLAN.

Claimant address is—*Washington, D. C.*

HUGHES, DENVER & PECK,
Claimant's Solicitors, 258 G Street, Washington, D. C.

7 EXHIBIT A.

[Circular.]

Instructions for inspectors of cavalry horses.

WAR DEPARTMENT, CAVALRY BUREAU,
Washington, D. C., Feb. 5, 1864.

Hereafter inspectors of horses, acting under instructions from this bureau, will be governed by the following regulations:

A register will be kept at each depot on which contractors will register their names, the number of horses they have contracted to deliver, the beginning and end of each contract, and the number presented for inspection each day.

Inspections will be made according to this register. Any contractor not present when his turn comes, will be required to wait till the horses of those who shall then be waiting shall be inspected. The senior inspector will cause the horses furnished under each contract to be placed in the inspection yard, at least twenty-four hours before inspecting them; at which time he will require every person except his assistants to leave the yard, and permit no other person to enter it, or handle the horses, until the inspection and branding is completed.

2. The inspection will be conducted with the view of obtaining sound and serviceable horses, and in such a way as to make it to the advantage of the contractor to identify his interest with those of the Government. Therefore, all horses presented that are manifestly an attempt at fraud on the Government, because of incurable disease or any purposely concealed defect whatever, shall be branded on the left shoulder with the letter R.

3. Horses that are rejected for being under age, in poor condition, or temporarily injured by transportation or otherwise, shall be lightly branded on the front part of the forehoof, near the coronet, with the letter R, not to exceed in length three-fourths of an inch. Should any horse thus marked become fit for service before the expiration of one month, he may be again presented for inspection, provided the contrac-

tor, before presenting him, shall notify the inspector or inspectors of the fact. Inspectors will be particularly careful in making these re-
inspections, and any horse once rejected, that is presented with-
8 out the required warning, shall be considered as an attempt at
fraud upon the Government and be treated as prescribed in paragraph 2.

4. All horses rejected will be removed as soon as they pass from the hands of the inspectors, from the immediate vicinity of the corrals in which those accepted are kept.

5. When horses are doubtful, before branding, they may be kept three or four days, under guard, at the expense of the contractor, be again rigidly examined, and then finally disposed of in accordance with the foregoing rules. No mares will be accepted.

6. In the inspection of horses, inspectors will proceed as follows: The horses will be led one by one as fast as needed, from the receiving yard, by a halter or snaffle bridle, without blinds or saddle; then ascertain his height by actual measurement. He should be between fifteen (15) and sixteen (16) hands high. Examine his mouth and ascertain his age, and that his teeth are sound. When the teeth have been filed or otherwise tampered with, to conceal his age, he shall be treated as an attempt at fraud. No horse under size, or less than five (5) years of age, or over nine (9) should be received, except when he is in every other way suitable for cavalry service. In no case will horses over ten years of age be received. Look at his eyes, and see that they are sound. Examine his ears, and see that they are clear of disease, particularly on the inside. Examine his head carefully in other respects, and see that there are no diseases or material imperfections. Inspect his legs closely for spavins, splints, sprains, curbs, and other imperfections.

7. Each foot should be carefully examined to see that there are no cracked, split, or pummiced hoofs, corns, or evidence of acute founder. The feet should be sound in all respects. Next examine the general appearance of the horse; that his coat is sound and good, withers not too high nor too heavy; that the length of the loins is in proportion to the rest of the body; the back sound and free from knots, and old sores temporarily healed; the belly large and not pinched up. After having gone through the foregoing, the horse should be led off, first at a walk, then at a trot. Observe how he moves, that his feet do not interfere, and that his motion is free from stiffness. He should be turned short around to the right and left to ascertain any injury to the chest or
shoulders. He should then be mounted, and vigorously exercised
9 for several minutes, to see that his wind is good; that he has
strength to carry his rider; does not stumble, and has been properly broken.

8. These means having been resorted to, and no serious defect discovered, the horse must be returned to the stand of the inspector, and, under his observation, branded on the left fore shoulder with U. S., in the usual manner. The initials of the name of the inspector, together with that of the contractor, shall also be branded on the neck, under the mane, in such a manner that each horse can be traced to the inspector and contractor by whom he was brought into service. This brand should not be too large—should be placed on the flat of the neck, the inspector's name first, and then that of the contractor.

9. All branding irons, when not in use, must be kept under lock and key, in charge of the quartermaster receiving the animals. Every precaution must be taken to prevent rejected horses from being put among good ones, and branded as passed Gates of corrals should be secured

at night by locks, and military guards, when practicable, be stationed so as to prevent tampering in any way with the enclosure or the horses.

10. Horses will be fed at the expense of the contractors till they have been branded and accepted.

11. A complete record of all inspections will be kept at the office of receiving quartermaster on duty at that post. A copy of this record will be forwarded at the close of each contract, and give detailed information concerning the entire range of duties involved in the purchase, care, and inspection of horses for cavalry service at that place.

12. The following certificates will be made on the inspection report of the inspector, when he is a commissioned officer. The affidavit attached is for civil inspectors, and must be qualified in the manner prescribed by the present regulations and orders of the Army. (Reg. 1031.) It should be, for convenience, printed upon the voucher.

(Certificates omitted.)

By order of the Secretary of War:

J. H. WILSON,
Brigadier General in charge of Bureau.

10 [EXHIBIT B.]

Case of S. S. Smoot, citizen.

WAR DEPARTMENT,
Bureau of Military Justice, June 30th, 1864.

To the President:

This is the case of a contractor for supplies found guilty of wilful neglect of duty under the act of July 17, 1862, sec. 16th. He was found not guilty of fraud, which also was charged against him.

In the former review of this case, which occurred on the filing of the record, the examination was chiefly directed to the regularity of the proceedings, and did not involve that critical analysis of testimony which has been made on the present application, and the results are now submitted.

It appears that Government proved the contract, its non-fulfil'ment, and the fulfil'ment of a similar one, by another person, at the same time and place, apparently assuming that the presumption of wilful neglect arose prima facie therefrom.

The defence proved the following state of facts:

The contracts (which were, one for 2,500 horses, to be delivered in St. Louis in forty days, and one for 2,500 deliverable in Chicago in 50 days, both dated February 5, 1864) were consequent upon awards of January 30th. A number of other horse contracts were let to various parties at the same time. The signing and sealing were previous to February 5th, one a little after that day. A circular was prepared at the cavalry bureau at Washington, prescribing a new mode of inspection.

The chief changes were a requirement that horses should be left for at least 24 hours at the expense of the owner in the hands of the Government officials, and that if they were rejected they should be branded with the letter "R," as follows: all that were manifestly an attempt at fraud from incurable or concealed disease, on the left shoulder; if under age, in poor condition, temporarily injured by transportation, &c., then on the front of the fore hoof.

It was shown that the almost universal practice and course of trade was for contractors to buy droves of horses through the country

11 of dealers "subject to inspection," paying for none which did not pass. Quartermaster's vouchers for the delivery enabled the contractors to obtain money from bankers, as needed, to pay, losing interest on the money until the fulfil'ment of the contract enabled them to obtain payments and take up the "collaterals."

The circular above described stated "a panic in the horse market from which it has not yet recovered"—as it is expressed by a heavy contractor, a witness for prosecution. The reasons appear from the evidence to have been the injury done to the rejected horses, and the power given malicious or hostile inspectors to ruin a dealer by depreciating the value of his stock; and his character by branding him as a defrauder at the same time that they branded his horse as a fraud.

It was also shown that, under this circular, bankers refused to assist the contractors. It does not very definitely why; but the fact and the reason given by the bankers, were fully proved. It seems that in January a circular was issued whose effect does not appear to have been known at Washington at the bidding. Some of the features of that of February 5th, were embodied in it. The receipts of horses under these new regulations at the depot in Chicago, fell off from an average of 3,200 a month to 22 horses in the month of February.

Capt. Potter, the chief quartermaster at Chicago, who furnished these figures, testifies that the circular materially retarded delivery.

Mr. Smoot, the accused, went to New York immediately upon signing contract. The evidence is very full that he was not informed of the proposed circular, and that none of the contractors were. Indeed the day after, it was still in manuscript and being altered somewhat for publication. It does not appear what he did immediately, but in the latter part of February, he engaged a valuable man who understood the horse trade, one Reynolds, to go to Chicago and buy horses. Smoot, Reynolds testifies, could not leave. This agent went immediately to Chicago and began to range the country for horses. It is scarcely necessary to recount the evidence concerning his efforts and want of success. It was shown that horses could not be obtained under the circular "subject to inspection." Some would put them in upon receiving indefinitely a large sum for all that might pass, but most men would't have "anything to do" with the business, and had stopped purchases from

12 the farmers. The bondsmen of Smoot becoming alarmed sent one of their number out west, as his agent, with full powers about March 1st, when four weeks were still left them.

The result of his efforts was the same. He travelled in Illinois and Missouri during the early part of March, but could not get the animals. Others interested went to the cavalry bureau and obtained a promise of modification of the circular. March 7th, an explanatory circular was issued which did not however alter the requirements. Smoot's agents had meanwhile come back to Chicago, could obtain no further modification from Gen'l Wilson, who was there, and in their principal's name there threw up the contract.

It was shown in explanation of the success of the other contractor, that the instructions of the new circular were not carried out against him while relaxation was refused the accused.

All the above evidence is uncontradicted. The Government accepted the facts, and thereon Mr. Smoot, being found guilty, was fined ten thousand dollars and sentenced to imprisonment until the same was paid; not to be so kept, however, more than three years.

It is thought that the following consideration was overlooked by the court, viz: that the accused was prevented from the performance of his

contract, in great part at least, by the action of Government officials, which they were mistaken in supposing was warranted by law. It is thought that no authority exists in the head of the cavalry bureau to instruct his subordinates to punish even the fraudulent presentation of a horse; still less can he authorize, as in the circular, the depreciation of property by branding, when such property is rejected for the common defects which might not be discovered and involve no fraud. It may be reasonable that the time of inspectors should not be taken up in re-examination of rejected horses. It may be proper that an inferior animal should be announced as such to the world; but the law does not give to officials the power to protect themselves in this manner, nor does it allow them to assume the duties implied in any such endeavor to secure honesty in private transactions as was intimated for the Government on the record of the trial.

The inspector who had ventured to brand as directed, or the superior who so ordered, would have been liable to an action at common law, if it were without the consent of the owner, and Government cannot
13 force a contractor to deliver his property up to be subjected to a wrong. The circular not only introduced new conditions into the agreement, but unlawful conditions. The attempt made by the accused to perform the conditions, even after the obstacle thrown in his way, is an indication of a laudable desire to keep inviolable his obligations, rather than a proof of his acquiescence in the new terms imposed.

The conclusion reached by this office after full consideration is, that it does not sufficiently appear that the facts upon the record involved fraud, or show a wilful neglect of duty.

The failure to perform the conditions of the contract seems rather to have resulted from unforeseen embarrassments introduced by the action of the Government itself.

It is certainly a case for the exercise of executive clemency.

Respectfully submitted.

(Signed) J. HOLT,
Judge Advocate General.

14 In the United States Court of Claims. December term, A. D., 1868.

SAMUEL S. SMOOT
vs.
THE UNITED STATES. } No. 5957.

And the said defendants, by their Attorney General, come and make answer to the petition of claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sam of $67,500 00, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

Filed Aug. 17, 1869.

T. LYLE DICKEY,
Assistant Attorney General.

15 In the Court of Claims of the United States.

SAM'L S. SMOOT
vs.
THE UNITED STATES. } No. 5957.—Jan'y 20, 1870.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and, by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

16 In the Court of Claims.

SAMUEL S. SMOOT
vs.
THE UNITED STATES. } 5957.

And now, to wit, 23 of May, A. D. 1870, the court, upon the due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Samuel S. Smoot, have, and recover of and from the United States the sum of twenty thousand dollars *dollars* no cents, ($20,000 00.)

By the court:

A true copy of record.

17 In the Court of Claims. Dec. term.

SAMUEL S. SMOOT
vs.
THE UNITED STATES. } 5957.

The defendants come and take an appeal from the judgment of this court, in this case, to the Supreme Court of the United States.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in the clerk's office, May 24, 1870.

Ordered, That the appeal, as prayed by the defendants in the case of Samuel S. Smoot vs. The United States, 5957, be allowed.

By the court.

May 24, 1870.

18 In the Court of Claims. Dec. term, 1869.

SAMUEL S. SMOOT
vs.
THE UNITED STATES. } 5957.

Now comes the said claimant, by his solicitors, in open court, and prays that an appeal may be allowed to him from the decision, and the judgment of the court heretofore rendered in this case.

JAMES HUGHES,
C. F. PECK,
Solicitors for Claimant.

Filed in clerk's office, 24 May, 1870.

Ordered, That the appeal, as prayed in the case of Samuel S. Smoot vs. The United States, 5957, by the claimant, be allowed.

By the court.

May 24, 1870.

19 *Smoot's case.—Findings and conclusions.*

This case coming on to be heard at the December term, 1869, the Court of Claims, upon the proofs, make and determine the following findings of fact:

I. The claimant, on the 5th February, 1864, at the city of Washington, entered into an agreement with Capt. James A. Ekin, chief quartermaster of the cavalry bureau, a bureau of the War Department, for the sale of 2,500 cavalry horses at St. Louis, Missouri, being the contract set forth and declared upon in the petition. The defendants, by their officer, the chief of the cavalry bureau, shortly afterward issued the order dated February 5th, 1864, annexed to, and forming part of, the petition. The order was promulgated at St. Louis, on or before the 1st March, 1864, but the inspection of cavalry horses, which it required, was not enforced at St. Louis as against contractors holding prior contracts. The claimant had knowledge of the order, and was thereby led to believe that the defendants' quartermasters, at St. Louis, would require and exact the inspection of horses which it enjoined and prescribed, but the claimant did not attempt to perform under his contract at St. Louis, nor tender the horses for inspection, nor ap-
20 ply to the defendants' officers to suspend the operation of the order at St. Louis in order that he might perform, nor did he own or transport any horses to St. Louis, nor was he ready to perform at that point.

II. The claimant also entered into the second contract with defendants' quartermaster, set forth and declared upon in the petition for the sale of 2,000 cavalry horses, at Chicago, Illinois, dated the 5th February, 1864. The order requiring a new inspection of horses, issued by

the chief of the cavalry bureau, was promulgated and enforced at Chicago on or about the 1st March following, and the defendants' quartermasters at that point were forbidden to receive or accept horses on all contracts unless subjected to the inspection which the order prescribed. And the chief of the cavalry bureau then being in Chicago, was applied to by various contractors to waive or suspend the new inspection required in favor of prior contractors, all of which applications he refused. The claimant proceeded to Chicago, by his agents, and was able and willing to perform by delivering the horses within the time prescribed by the contract, subject to the inspection by the contract
21 prescribed, but was unwilling to deliver any horses subject to the inspection required by the order. The claimant did not possess any horses in Chicago, nor tender any to the defendants' quartermasters at that place, nor apply to the chief of the cavalry bureau to waive the inspection ordered; but the claimant possessed ample time and means for procuring horses, and fulfilling the contract, and he regarded the order as a renunciation by the defendants of their agreement, and he had knowledge of the refusals of the chief of the cavalry bureau to waive the inspection or suspend the operation of the order against prior contractors.

III. The fair profits which the claimant would have made on the 2,000 horses to be delivered at Chicago, if he had been allowed to perform according to the terms of his contract, would have been the sum of $10 00 a horse.

IV. The claim or cause of action on which this suit is brought was never presented for payment to any Executive Department of the Government, but the claim being for damages for the breach of a contract by the defendant is not one usually settled or adjusted by the Executive Departments.

22 And the Court of Claims, on the request of the claimant to find as to certain additional facts deemed by him material, does hereby find the following:

V. At the time these contracts were entered into, and long prior thereto, the mode of inspection for horses purchased by the Government had been for the horses to be presented and immediately examined in the presence of the owner, and if satisfactory they were accepted, and if unsatisfactory they were immediately returned to the contractor without delay, expense, or blemish.

VI. At the time the contracts were entered into, and for a long time prior thereto, the usual course of business in filing contracts of this kind, had been for the contractor to buy his horses, subject to the Government inspection.

One effect of the order for a new mode of inspection was to create a change in this course of business, and thereafter no horses could be purchased by contractors subject to this new inspection.

Another effect of this order was to impose upon the contractor considerable risk while the horses were in the custody of the in-
23 spector, being injured by kicks and bruises, and incurring contagious diseases, and the identity of the animals being lost by being mingled with other lots, so that in the event of rejection the same animals could not be returned; besides the expense of keeping the animals, and the injury which might occur from the rejecting brand. The effect of branding a rejected horse, as prescribed in the new order of inspection, would be to greatly lessen his market value.

VII. The claimant, during the existence of the contracts, was possessed of sufficient means and credit to comply with the stipulations on

his part, and, by his agents, proceeded to Chicago and other parts of the western country, to make the necessary arrangements for that purpose, and did make all necessary arrangements, excepting the actual procuring of the horses.

VIII. Upon ascertaining the effect produced by the new order of inspection, the claimant caused application to be made at the office of the bureau of cavalry, in Washington, for a modification of this order, and repeatedly offered to go on and fill the contracts if the objec-
24 tionable features of this order should be removed. The chief of the bureau was then absent; the next officer in rank referred the matter to the chief, who was expected to be in Chicago soon to decide the matter there. Gen. Wilson, the chief of the cavalry, did soon after arrive in Chicago, and the matter was presented to him by several other contractors who were in the same position as claimant, and Gen. Wilson decided not to revoke or modify the order. The claimant, or his agent, did not see Gen. Wilson in Chicago, but his decision was communicated to the claimant.

IX. The claimant has always borne true allegiance to the United States, and has never given aid or comfort to the rebellion, or to persons engaged therein.

X. The reasonable profits which would have accrued to the claimant if he had been allowed to go on and complete the contracts without interference, would have been ten dollars for each and every horse to be delivered.

25 And upon these facts, the court, as a conclusion of law, decides that the claimant should recover upon the contract set forth in the second finding of fact, the sum of $20,000; and that as to the contract set forth in the first finding of fact, judgment should be for the defendants.

By the court.

(Indorsed:) 5957. Findings in Smoot's case. Filed by Judge Nott. Dec. 1, 1870.

26 In the Court of Claims.

SAMUEL S. SMOOT
vs.
THE UNITED STATES. } No. 5957.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for defendants, for the allowance of an appeal, as filed in the clerk's office May 24, 1870, and of the order of the court of 24 May, 1870, allowing the same; of the application of counsel for claimant for the allowance of cross-appeal of 24 May, 1870, & of the order of court allowing same; of the findings of fact & conclusions of law on said facts, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 12th day of January, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 482. The United States, appellants, vs. Samuel S. Smoot, and No. 483. Cross-appeal. Samuel S. Smoot, appellant, vs. The United States. Court of Claims. Filed 13th January, 1871.